



**Legal Aid, Sentencing and Punishment of Offenders Bill  
Part 3 – New Sentencing clauses**

**Briefing for Report Stage  
House of Commons**

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## **Introduction**

1. We have already briefed on the provisions of the Bill for Report Stage. Since the Justice Secretary has introduced further sentencing provisions following his review of indeterminate sentencing for public protection,<sup>1</sup> in this briefing we set out our views on the amendments proposed. Our initial views are expressed below for the purposes of debate on whether these provisions should be added to the Bill. These should not be read as our definitive view on the proposals.

### **NC30 - Repeal of indeterminate sentences for public protection**

2. We welcome the Minister's conclusions that indeterminate sentences have proved unworkable and that these will be repealed. Many people have been detained for far longer periods under sentences of imprisonment for public protection (IPP) than is proportionate to their crime and in ways completely unforeseen when the scheme was initiated. As the Minister has indicated, it was an unmitigated disaster which has left people languishing in prisons with their release date entirely uncertain.<sup>2</sup>
3. We certainly support the repeal of sections 225(3) to (4) and 226(3) to (4) to ensure no further convicted people are sentenced to an IPP.
4. However, what is not clear from the amendments is how the Minister proposes to resolve the problem of those currently serving an IPP. NC34 on page 3632 of the Notice of Amendments will introduce the power to change the test for release on licence of certain prisoners by order. It is not clear what conditions will be required to achieve this. We hope these will be indicated in Debate and that an Order will be brought forward with due expediency to ensure release of those eligible as soon as possible.

### **NC31 - New Mandatory Life Sentences**

5. We are extremely concerned to see that the proposed method of mitigating the anticipated effect of repeal of the IPP is to create new mandatory sentences of life imprisonment. This approach labours under the assumption that the public will be

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<sup>1</sup> Notice of Amendments, 26<sup>th</sup> October 2011

<sup>2</sup> The Today Programme, BBC Radio 4, 26<sup>th</sup> October 2011

concerned that dangerous criminals will otherwise be released from prison. Should any such public opinion be expressed in our view the Government has the responsibility to correct it not create additional sentences which impose restraint upon the independence and discretion of the courts.

6. Mandatory life sentences are currently limited to murder. The sentence was applied to murder when the death penalty was repealed.<sup>3</sup> The reasons for this can be gleaned from Sydney Silverman MP who introduced the private member's bill which led to the final repeal of the death penalty for all homicide offences:

But what is true, and what I would advise the House not to depart from, is that murder, whether grave, or not so grave, is a crime unique, a crime in its own category, and a crime which society is bound to condemn by enacting a mandatory sentence for it, whatever happens afterwards in the administration of it.<sup>4</sup>

7. The Law Commission recommended in 2006 that homicide should be categorised to limit the mandatory life sentence further to the most serious types of murder.<sup>5</sup> However, the previous Government in a subsequent summary of responses to its consultation paper reiterated:

The mandatory life sentence reflects the seriousness of killing with an intention to at least cause serious harm and was supported by Parliament during the passage of the Criminal Justice Bill in 2003. The penalty for murder is an essential element in maintaining public confidence in the justice system which this government will maintain.<sup>6</sup>

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<sup>3</sup> Under the Homicide Act 1957 and thereafter the Murder (Abolition of the Death Penalty) Act 1965.

<sup>4</sup> HC Deb 25 June 1965 Vol 714 c2191

<sup>5</sup> Law Commission, *Murder, Manslaughter and Infanticide*, Law Com No 304, November 2006, paras 1.35-1.38

<sup>6</sup> Ministry of Justice, *Murder, manslaughter and infanticide: proposals for reform of the law - Summary of responses and Government position*, CP(R) 19/08, 14 January 2009, para 121. See also Maria Eagle (then Justice Secretary):

Murder is the most serious crime and it is essential that the law reflects this. The Government remains committed to retaining the mandatory life sentence and the sentencing principles for murder set out in the Criminal Justice Act 2003 (Ministry of Justice Press Release, *Government launches consultation into review of murder law*, 12 December 2007)

8. Furthermore, the distinction between murder and other crimes was stated quite succinctly by the United States Supreme Court when it abolished the death penalty for crimes other than murder:

The court concludes that there is a distinction between intentional first-degree murder, on the one hand, and non-homicide crimes against individuals, even including child rape, on the other. The latter crimes may be devastating in their harm, as here, but in terms of moral depravity and of the injury to the person and to the public, they cannot compare to murder in their severity and irrevocability.<sup>7</sup>

9. Suggesting that there is a need for a mandatory life sentence ignores the current sentencing framework which already recognises the need for severe penalties for serious crimes. Inflicting grievous bodily harm with intent, and rape, both carry maximum life imprisonment sentences by statute. The sentencing guidelines for serious assault and sexual offences already indicate sentences ranging between 9 to 12 years and 6 to 19 years respectively.<sup>8</sup> These guidelines are developed by experts considering carefully and independently the complexities the sentencer has to take into account. The judiciary is then best placed when considering the particular circumstances of the offence to decide the appropriate custodial term.
10. Whilst the Minister has indicated that the mandatory life sentence should be reserved for the most serious of crimes such as violent rape which without medical advances would have resulted in murder,<sup>9</sup> the proposed amendment does not limit the mandatory sentence to these types of crime. Rather, schedule 15B includes an extremely wide range of offences to which the seriousness and previous offence conditions proposed in s224A can attach. Seriousness is defined in s224A(3) as an offence such as to justify the imposition of a sentence of imprisonment for 10 years or more. There is no further indication of what the appropriate term for the life sentence should be. In contrast schedule 21 of the Criminal Justice Act 2003 sets out in detail how minimum terms for mandatory life sentences for murder should be approached

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<sup>7</sup> *Kennedy v. Louisiana*, 554 U.S. 407 (2008)

<sup>8</sup> Sentencing Council, *Assault Definitive Guideline* (13 June 2011); Sentencing Guidelines Council, *Sexual Offences Act 2003 Definitive Guideline* (2007)

<sup>9</sup> Today Programme, *supra*.

and provides categories from whole life terms down to 12 years. This schedule has been criticised by the present Government as overly prescriptive and in need of reform.<sup>10</sup> Yet with such a wide range of offences attracting a possible mandatory life term under the proposed amendment, there seems to be a distinct lack of clarification about which offences the Government considers need mandatory life sentences and how the judiciary should approach this obligation.

11. In JUSTICE's view the mandatory life sentence should be reserved to murder. By doing so the punishment underlines the distinctly serious nature of taking another person's life. The sentencing provisions for other serious offences are already appropriate, as are the sentencing guidelines through which the judiciary impose custodial terms. The repeal of IPPs should not consequently impact adversely upon the sentencing practice which the courts follow for serious crime and, without the additional dangerousness determination, impose appropriate custodial punishments. We do not agree that a case has been demonstrated to support the extension of the mandatory life sentence in the way proposed. These amendments should not form part of the Bill.

#### **Amendments 154-158 - Offences of threatening with article with blade or point or offensive weapon in public or on school premises**

12. The proposed amendments would extend clause 113, which imposes a minimum term of six months imprisonment for a person convicted of a new offence of threatening with a weapon or bladed article, to children. Where a child of 16 to 17 years is convicted of this offence, the amendment proposes a minimum term of four months detention and training. We have already said in our briefing with respect to clause 113 that the new offence replicates existing offences and as such is unnecessary, but more importantly we oppose the minimum six month term. This is because the minimum term can distort the sentencing framework. As indicated above, minimum terms impose unnecessary limits on the independence of the judiciary who are already guided by the Sentencing Council.

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<sup>10</sup> Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010, para 170

13. Extending the mandatory sentence to require young people to serve an automatic term of detention ignores the causes of gang related weapon offences, the vulnerable position many young offenders are in and ultimately will reinforce their criminal activity rather than stemming it.<sup>11</sup> As such we do not believe the amendments should be added to the Bill.

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JUSTICE  
26<sup>th</sup> October 2011

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<sup>11</sup> SCYJ, *Custody for Children: The Impact* (February 2010) [http://www.scyj.org.uk/files/the\\_impact\\_of\\_custody\\_-\\_position\\_paper\\_FINAL.pdf](http://www.scyj.org.uk/files/the_impact_of_custody_-_position_paper_FINAL.pdf)